

In the Claims:

Add the following new claim:

02 --29. The liquid formulation according to claim 14, wherein the component a) is sodium di-(2-ethylhexyl)sulfosuccinate) and the ALS inhibitor is iodosulfuron-methyl or its sodium salt.--

REMARKS

This invention provides for, *inter alia*, liquid formulations comprising one or more compounds selected from the group of gemini surfactants and/or sulfosuccinates and one or more compounds which are inhibitors of acetolactate synthetase (ALS inhibitors) in dissolved form. The inventive formulations provide for a formulation which is stable to degradation and which exhibit favorable performance properties.

Pursuant to C.F.R. 1.136(a), Applicants petition the Assistant Commissioner to extend the time period to file a response by three (3) months, i.e. up to and including February 10, 2003. A check for \$930.00 is enclosed to cover the cost of the petition. Should any further fee be required, the Assistant Commissioner is authorized to charge such fees, or credit any overpayment to Deposit Account No. 50-0320.

In response to the Requirement for an Election of Species, Applicants elect the composition of claim 29, i.e., the composition which comprises a sulfosuccinate (sodium di-(2-ethylhexyl)sulfosuccinate) and the ALS inhibitor is a sulfonylurea (iodosulfuron-methyl or its sodium salt). Support for the elected composition is found on page 9, line 24 (sodium di-(2-ethylhexyl)sulfosuccinate) and the last two line on page 14 (iodosulfuron-methyl or its sodium salt) of the specification. Applicants respectfully traverse this requirement, if it means that the Examiner will not go on to search the remainder of the compositions should this composition be

found to be allowable. Applicants respectfully urge that the Requirement does not establish that searching all the claims would constitute an undue burden and that it is contrary to public policy. Accordingly, reconsideration of this Requirement is requested.

The MPEP lists two criteria for a proper restriction requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ... even though it includes claims to distinct or independent inventions.” *Id.*

Applicants urge that the Requirement does not meet the second of these criteria. First, the Requirement does not establish that searching all the compounds that comprise the combination is an undue burden to the Office. Claim 14 indicates that the formulations comprise:

- a) one or more active compounds selected from the group of gemini surfactants and sulfosuccinates; and
- b) one or more active compounds from the group of the ALS inhibitors in dissolved form.

As the individual compounds are part of a defined class of compounds, it is urged that the searches for the individual compounds would overlap and the searches would not constitute an undue burden to the Office. Moreover, this would appear to be the situation since Applicants already received an examination on the merits of all the claims. Since, by issuing the Office Action, the Examiner has indicated that all of the compounds have been search, it is unfair to Applicants now to require a restriction between the individual compounds.

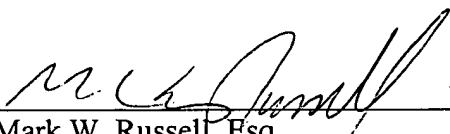
Further, it is respectfully urged that restricting the claims in the manner suggested in the Requirement constitutes an undue burden to Applicants as well as the public. Under GATT the term of a patent is calculated from the filing date of the original application. Thus, Applicants will receive a reduced term for any patents that issue on divisional applications. Applicant cannot mitigate against this since the Requirement does not indicate how many distinct species the Examiner believes are present. Further, the cost of prosecuting and maintaining so many patents is unreasonable in view of the fact that the compounds that constitute the combinations are so closely related. Moreover, the public is inconvenienced as they will not know whether or not Applicants will file a divisional application to the remaining subject matter. Accordingly, the public will not know if they can practice the remaining invention without infringing future patent application.

Thus, in view of the foregoing, reconsideration and withdrawal of this rejection is requested and favorable action is earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By:



Mark W. Russell, Esq.
Reg. No. 37,514
(212) 588-0800 Tel.
(212) 588-0500 Fax